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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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In re DYNAMIC RANDOM ACCESS  
MEMORY (DRAM) ANTITRUST  
LITIGATION

No. M 02-1486 PJH

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10 This Document Relates to:**ORDER DENYING MOTIONS  
TO SEAL RE SUMMARY  
JUDGMENT**

11 All Direct Purchaser Actions

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13 On February 20, 2007, the court issued its order granting summary judgment in part  
14 and denying summary judgment in part. In it, the court instructed the parties to re-file the  
15 motions to seal that had been filed in connection with the summary judgment motions, in  
16 order to allow the court to make a streamlined and efficient determination of the parties'  
17 sealing requests. Pursuant to that order, defendants Infineon, Hynix, and Micron have now  
18 filed revised motions to seal certain documents that were filed in connection with plaintiffs'  
19 opposition to defendants' summary judgment motions.

20 Preliminarily, defendants point out that the court has granted previous requests to  
21 seal similar documents (and in one case, the same document) in connection with plaintiffs'  
22 motion for class certification, decided by the court last year. However, this does not control  
23 the court's decision here. A higher burden is imposed on dispositive motions than on non-  
24 dispositive motions. See, e.g., Kamakana v. City of Honolulu, 447 F.3d 1172, 1179-80 (9th  
25 Cir. 2006)(compelling reasons must be shown to seal judicial records attached to a  
26 dispositive motion); see also Foltz v. State Farm Mutual Auto. Ins. Co., 331 F.3d 1135-36  
27 (9th Cir. 2003). And even though the court applied Kamakana's "compelling reasons"  
28 standard to the parties' prior motions to seal in connection with the class certification

1 motion (finding that motion akin to a dispositive motion), the court nonetheless scrutinizes  
2 the instant motions to seal with a finer lens, in view of the fact that they are filed in  
3 connection with actual summary judgment motions, and in view of the fact that they are  
4 likely to be proffered as exhibits at trial.

5 Applying Kamakana in the context of the instant motions to seal, defendants have  
6 not demonstrated sufficient "compelling reasons" for a sealing order. See Kamakana, 447  
7 F.3d at 1180. Although defendants each assert that the documents they seek to have  
8 sealed reveal critical proprietary information regarding defendants' commercial and pricing  
9 policies and strategies, inventory strategies, and internal sales and marketing policies,  
10 none of the documents actually appears to contain information directly revealing such  
11 proprietary information. Moreover, none of the documents appears qualitatively different  
12 from the kind of information that has already been filed in the public record in this case, and  
13 which will be treated publicly at trial.

14 Accordingly, all three motions are DENIED. To the extent that any party's motion to  
15 seal, filed in connection with the dispositive motions at issue, is still pending due to that  
16 party's failure to withdraw or re-file their motion pursuant to the court's February 20, 2007  
17 order, those motions are also hereby DENIED. The parties are further instructed to file (a)  
18 unredacted versions of all corresponding documents that were filed partially or wholly  
19 redacted; and (b) all corresponding documents that were filed pursuant to a manual filing  
20 notification and conditionally lodged under seal.

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22 **IT IS SO ORDERED.**

23 Dated: March 6, 2007



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PHYLLIS J. HAMILTON  
United States District Judge